Supreme Court, U.S.
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No. 02-1397

In the Supreme Court of the United States

JOHN RASMUSSEN, ET UX.,
Petitioners,

v.

KING COUNTY, WASHINGTON,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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APPLICABLE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND REGULATIONS

1. Act of March 3, 1873, ch. 266, 17 Stat. 602 (1873).

> Any person who has already settled or hereafter may settle on the public lands, either by pre-emption, or by virtue of the homestead law or any amendments thereto, shall have the right to transfer, by warranty against his own acts, any portion of his pre-emption or homestead for church, cemetery, or school purposes, or for the right of way of railroads across such pre-emption or homestead, and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to their pre-emption or homestead.
>
> Codified at Sec. 2288, Revised Statutes of the United States (1878).

2. 16 U.S.C. 1247(d). Interim use of railroad rights-of-way.

> The Secretary of Transportation, the Chairman of the Surface Transportation Board, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.), shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future

reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes...

3. RCW 64.04.050. Quitclaim deed – Form and effect.

Quitclaim deeds may be in substance in the following form: The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of ...., state of Washington....

4. 28 U.S.C. §2344. Review of orders; time; notice; contents of petition; service.

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue

lies. The action shall be against the United States...

STATEMENT OF THE CASE

1. DISTRICT COURT'S JURISDICTION.

As the Ninth Circuit found, the District Court's jurisdiction over this matter was pursuant to 28 U.S.C. § 1331 (federal question). Petition App. at 9. The Ninth Circuit correctly applied the well-pleaded complaint rule. Id. (citing Patenaude v. Equitable Life Assurance Soc'y of United States, 290 F.3d 1020, 1023 (9th Cir. 2002)).[1] In its Complaint, King County pled, in the alternative, that it had a legal right to "maintain, use, enjoy and develop the subject property" as a recreation trail even if the County's predecessors only acquired an easement for use of the subject property for railroad purposes. The source of this legal right is 16 U.S.C. §1247(d), the Rails to Trails Act.

2. FACTS

Bill Hilchkanum filed a homestead application on June 28, 1876 under the Homestead Act of 1862. After making final proof, Mr. Hilchkanum was issued a Final Certificate on March 29, 1884, by the Register of the Land Office at Olympia, Washington Territory. A patent was issued to Mr. Hilchkanum on July 24, 1888.

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[1] Petitioners argue that the district court lost its jurisdiction when it dismissed Petitioners' counterclaims. Petition at 2. However, the court's jurisdiction must be based on the contents of the Complaint, not Petitioners' counterclaims.

By deed dated May 9, 1887, Bill Hilchkanum and his wife ("Hilchkanums") conveyed to the Seattle Lake Shore and Eastern Railway Company (the "Railway"), a portion of the land the Hilchkanums obtained under the Homestead Act. The property conveyed to the Railway consisted of a continuous, 100'- wide strip of land, over one mile long, running along the eastern shore of Lake Sammamish in King County, Washington. The 100'- wide strip of land bisects what was Petitioners' residential property.[2] The subject of this litigation is the portion of this strip of land to which Petitioners' property is adjacent ("subject property"). The strip of land conveyed by Hilchkanum to the Railway is just one segment of the East Lake Sammamish rail corridor ("the corridor" or "the ELS corridor") which runs approximately 11 miles along the shore of Lake Sammamish.

In early 1997, the Burlington Northern and Santa Fe Railway, successor in interest to the Railway, sold the entire ELS corridor, including the subject property, to a non-profit organization, The Land Conservancy of Seattle and King County ("TLC").

On June 11, 1997, TLC petitioned the United States Surface Transportation Board ("STB") to abandon use of the ELS corridor for rail service. On September 16, 1998, as authorized by 16 U.S.C. § 1247(d), the STB approved interim trail use (a.k.a. "railbanking") of the ELS corridor by King County and issued a Notice of Interim Trail Use ("NITU"). Shortly after the NITU was issued, King County then entered into an agreement with TLC to purchase approximately 11 miles of the ELS corridor, including the subject property. By

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[2] Petitioners transferred title to this residential property to a third-party by deed dated August 21, 2002 and recorded September 5, 2002.

virtue of its purchase of the ELS corridor, King County has become the successor in interest to the Railway, and holds title to the subject property in fee simple.

In answer to a quiet title action filed by King County in state court, Petitioner challenged King County's ownership of the property and removed the matter to federal district court. The District Court held - and the Ninth Circuit Court of Appeals affirmed - that King County owns the subject property in fee simple. In their Question Presented, Petitioners seek review of the Ninth Circuit's decision by alleging, *inter alia*, that the court created new federal law and, in doing so, superseded established state law. As the following will establish, Petitioners' Question Presented does not accurately reflect the Ninth Circuit's decision and other claims by Petitioners are wholly without merit.

REASONS FOR DENYING WRIT

1. THE DECISION BELOW IS CONSISTENT WITH FEDERAL AND STATE LAW REGARDING TRANSFER OF LEGAL TITLE TO THE LANDS AT ISSUE.

A. The land transferred to Hilchkanum by the federal government was not "non-federal land".

Petitioners' Question Presented is premised in part on an inaccurate presumption that the land at issue was "exclusively non-federal land". Petition at 1 (emphasis added). At all times prior to Hilchkanum taking title, the land in question was federal land. As evidenced by the issuance of the final certificate and, subsequently, the patent, the land was part of the public domain prior to Hilchkanum's

entry. As discussed further below, because the land was in the public domain, federal law determines the validity of the transfer of the land prior to issuance of the patent. Furthermore, whether the Act of March 3, 1873, ch. 266, 17 Stat. 602 (1873)[3], dictates the nature of the interest granted by the Hilchkanums to the Railway is an issue only because the land in question had been federal land. The statement that the land was "non-federal" is only one of several false premises from which Petitioners proceed.

B. Ninth Circuit applied the correct legal rules in deciding whether the Hilchkanum could convey fee simple title to the Railway prior to issuance of the patent.

The Ninth Circuit applied the correct law in reviewing the transfer of the federal land to Hilchkanum and determining that the Hilchkanums could transfer a fee simple interest in those lands to the Railway prior to the issuance of the patent. Federal law determines what constitutes a transfer of land out of the public domain. Wilcox v. Jackson, 38 U.S. 498, 516-17 (Mem), 13 Pet. 498, 10 L.Ed. 264 (1839). The Court in Wilcox held:

> ...whenever the question in any Court, state or federal, is, whether a title to land which has once been the property of the United States has passed, that question must be resolved by the laws of the United States; but that whenever, according to those laws, the title shall have passed, then that property, like all other

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[3] Codified at § 2288, Revised Statutes of the United States (1878)and hereinafter referred to as "Section 2288".

> property in the state, is subject to state legislation; so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States.

Id. See also, McCune v. Essig, 199 U.S. 382, 389-90, 26 S.Ct. 78, 50 L.Ed. 237(1905)(citing Wilcox). According to long-standing principles of federal law, the vesting of the right to a patent in an individual is equivalent to the individual obtaining title. See, e.g., U.S. v. Detroit Timber & Lumber Co., 200 U.S. 321, 334-35, 26 S.Ct. 282, 50 L.Ed. 499 (1906). The issuance of the patent at that point is merely a ministerial act. Id. at 335-36; and Simmons v. Wagner, 101 U.S. 260 (Mem), 261, 11 Otto 260, 25 L.Ed. 910 (1879). Additionally, the effective date of the patent relates back to the date the right to the patent vested. Detroit Timber at 334-35. Therefore, the Ninth Circuit did not "create" new federal law, it merely followed well-established rules of federal law. Furthermore, in applying these rules, the Ninth Circuit did not "supersede" state law since federal law - not state law - governs the issue of whether the Hilchkanums could grant a fee simple interest in the subject property prior to issuance of the patent, i.e. whether title passed to the Hilchkanums prior to issuance of the patent.

According to federal law, the Hilchkanums' right to the property at issue vested upon presenting final proof of a valid homestead claim as documented by the issuance of the final certificate. See Petition App. at 13. At that time, they held title to the property against all claims other than by the federal government. Once the patent was issued, title was considered transferred to Hilchkanum effective the date of the final certificate. Since the individual effectively holds title against all others, the individual may alienate all or a portion

of his or her interest the property without affecting his or her right to the patent. In Detroit Timber, the Court left in place timber contracts entered into by defendant prior to issuance of a patent to defendant. Id., 200 U.S. 321. In Cornelius v. Kessel, the Court quieted title in the heirs of an individual to whom property was conveyed after entry by the grantor but prior to the issuance of a patent. Id., 128 U.S. 456, 9 S.Ct. 122, 32 L.Ed. 482 (1888). In fact, once the right to a patent vests, state law, not federal law, governs such conveyances. Id. at 338. See also, Ruth v. U.S., 37 Fed.Cl. 677, 684 (1997). Therefore, under federal law, the holder of the right has equitable title and the authority to convey property prior to the issuance of the patent.

Since the entryman obtains equitable title upon issuance of the final certificate, it follows then that the Ninth Circuit correctly determined that Section 2288 does not restrict the type of transfers that could be made after final proof has been accepted. Not only does the individual obtain equitable title at that time, there also is no requirement that any subsequent transfers be reported after final proof. The purpose of Section 2288 is to identify transfers that would not "vitiate the right to complete and perfect the title to...homesteads." Since title is perfected at the time of final proof, Section 2288 has no application after the final certificate was issued. Hilchkanum had the right to transfer any interest to the property upon receipt of the final certificate. That right was further solidified into a legal right by the issuance of the patent.

C. No Need to Apply State Rules Regarding After-Acquired Property.

Petitioners imply that according to the state conveyance statute, RCW 64.04.010, a patent was required

in order to effectuate the transfer from the federal government to Hilchkanum. Petition at 15-16. Petitioners also assert that state law regarding after-acquired property would apply since the patent was issued after the deed to the Railway was executed.[4] Id. at 16-17. However, given that federal law governs the transfer of federal property and, pursuant to federal law, Hilchkanum obtained equitable title to the property at the time of the final certificate, there was no need for the Ninth Circuit to consider the state law regarding either the form of the conveyance from the federal government or after-acquired property.[5] Of course, the conveyance from the Hilchkanums to the Railway would be subject to state law, i.e. a deed was required. The Hilchkanums complied with this requirement in transferring the fee simple interest in the subject property to the Railway.

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[4] Petitioners assert that the deed at issue is a "quitclaim deed". Petition at 17. However, the deed is not in the statutory form of a quitclaim deed. RCW 64.04.050. The deed does not use the term "quitclaims". Instead, the Hilchkanum deed uses the words "...donate grant and convey.."

[5] Petitioners' arguments in this area are inconsistent because they allow that Hilchkanum, pursuant to Section 2288, could have conveyed a railroad right of way prior to the patent issuing without violating state law. Petition at 17. Yet, they argue that conveying other property prior to the patent issuing would have been a violation of state law. Perhaps Petitioners are implying that the former is allowed since a federal statute authorizes the conveyance. Given that federal law also allows the latter, this would be a difference without a distinction.

D. Court Properly Applied State Law in Interpreting Hilchkanum Deed to Railway.

Both courts carefully applied the relevant state law in determining the nature of the transfer of the strip of land from the Hilchkanums to the Railway. In doing so, neither the Ninth Circuit nor the district court created federal rules in reaching their conclusions. Furthermore, each court had jurisdiction to render a decision regarding the nature of the interest conveyed since the federal question involved was integral to the primary lawsuit. Before deciding whether 16 U.S.C. § 1247(d) prevented the interest granted by the deed from being extinguished, the courts needed to determine what interest was granted.[6] In ruling on the issue, the courts were exercising their direct jurisdiction, not their pendent jurisdiction as alleged by Petitioner. Petition at 2.

In rendering its decision, the Ninth Circuit followed the rules laid out in Brown v. State, 130 Wn.2d 430, 924 P.2d 908 (1996), and other state court decisions interpreting deeds to railroad companies. Brown is the latest pronouncement of the Washington Supreme Court on the subject. The Ninth Circuit reviewed and discussed every case cited by Petitioners, including an extensive treatment of Brown. Compare Petition at 20 with Petition App. at 15-30. The Ninth Circuit and the district court both applied the rule enunciated in Brown that a deed by deed analysis be undertaken considering the words within the deed as well as the surrounding circumstances and the subsequent conduct of

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[6] Petitioners also reinforced the jurisdiction of the federal courts regarding the interpretation of the deed by raising the issue of the application of Section 2288 and, thus, intertwining a federal issue in the determination of the nature of Hilchkanum's grant.

the parties. Brown 130 Wn.2d at 440. Petitioners offer opinions by "experts" to assail the court's application of the state law. Petition at 8-10. However, these opinions are merely the conclusions of individuals developed by applying their interpretation of the relevant law to the undisputed facts. Since applying law to undisputed facts is solely the role of courts, these opinions cannot call the Ninth Circuit's and the district court's well-reasoned decisions into question.

Petitioner also raises the issue of Hilchkanum's illiteracy, but that issue was addressed by the Ninth Circuit. Petition App. at 26-27 (note 13). The Court assumed that Hilchkanum received similar assistance in executing the deed as he had in navigating the Homestead claim process. Id. [7] Any inference to the contrary would not be reasonable.

E. No Departure From the Usual Course of Judicial Proceedings.

As the foregoing indicates, the decisions of the Ninth Circuit and the district court carefully applied the relevant law to the facts contained in the record. The decision in no way conflicts directly or indirectly with prior decisions or statutory provisions of either federal or state law. In addition, Petitioners do not place in question the courts' decisions to issue a summary judgement. Petitioners fail to point to any genuine issues of material fact or any reasonable inferences that should have been drawn in their favor that would change the outcome. The material facts, e.g., the content of the various deeds, considered by the courts are not in dispute and

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[7] Petitioner refers to RCW 64.20.020 which required court approval of deeds from Native Americans. Petition at 19. However, this statue was not adopted until 1890 and, therefore, is irrelevant to this matter.

other historical evidence raised by Petitioners is uncontroverted because it is not probative. Therefore, there is no reason this Court should disturb the Ninth Circuit's decision in this matter and Petitioner's application for a Writ of Certiorari should be denied.

2. OTHER ISSUES RAISED ARE IRRELEVANT TO QUESTION PRESENTED AND ARE SIMPLY WITHOUT MERIT.

A. Not Appropriate to Examine Other Deeds.

Petitioners suggest that this matter be remanded back to a trial court so that "all Native American-grantor, railroad-grantee deeds of the late 1800's, including Hilchkanum's deed" can be examined. Petition at 18. Obviously, such review would be unnecessary as well as incomplete. If other deeds are to be considered in determining the intent of the parties to the Hilchkanum deed, all deeds – whether by Native Americans or by grantors of other ethnicity – should be included in the review in order to present the court with a comprehensive picture of the surrounding circumstances. However, such a survey is unnecessary. Review of the wording of the deed to the Railway and other deeds granted by the Hilchkanums as well as deeds interpreted in prior reported decisions is sufficient to determine the intent of the parties to the deed at issue.

B. The District Court did not Have Jurisdiction to Consider the Spur Line Issue or Any Other Challenge to the STB Decision.

As the Ninth Circuit found, Petitioners' "spur line" argument and all other allegation of irregularities in the STB proceedings boil down to a challenge to the legality of the STB's decision to authorize railbanking of the subject property. See Grantwood Village v. Missouri Pacific R.R. Co., 95 F.3d 654, 657 (8th Cir. 1996)(challenge to transfer of property pursuant to the Trails Act is collateral attack on [STB] ruling). Pursuant to 28 U.S.C. §§ 2321(a) and 2342(5) (Hobbs Act), the federal court of appeals has exclusive jurisdiction over challenges to STB decisions. Id. See also, Dave v. Rails-to-Trails Conservancy, 79 F.3d 940, 942 (9th Cir. 1996)(practical effect of a taking claim is to seek review of the [STB's] order); Glosemeyer v. Missouri-Kansas-Texas R.R., 879 F.2d 316, 320 (8th Cir. 1989); and Lousiana-Pacific Corp. v. Texas Dept. of Transp., 43 F.Supp.2d 708, 711 (E.D.Tex. 1999).

A challenger of an STB order must file a petition for review in the federal court of appeals within 60 days following entry of a final STB order. 28 U.S.C.A. § 2344. Once the statutory 60-day period for seeking review of a final agency order has passed, the agency order is no longer subject to judicial review. Friends of the Atglen-Susquehanna Trail, Inc. v. STB, 252 F.3d 246 (3d Cir. 2001). The 60-day time limit is jurisdictional, and cannot be judicially altered or expanded. California Ass'n of the Physically Handicapped, Inc. v. FCC, 833 F.2d 1333 (9th Cir. 1987); Texas v. US, 749 F.2d 1144 (5th Cir. 1985), reh. denied 756 F.2d 882, cert. denied 105 S.Ct. 3513, 472 U.S. 1032, 87 L.Ed.2d 642; Chem-Haulers, Inc. v. U.S., 536 F.2d 610 (5th Cir. 1976).

Petitioners did not challenge the STB's decision in this matter. As a result the decision became res judicata for the purposes of these proceedings 60 days after it was issued and proper notice given.[8] Petitioners' opportunity to challenge subject matter jurisdiction has long since passed.

C. Ninth Circuit Properly Refused to Consider Ordinances Cited by Petitioners.

As the Ninth Circuit pointed out, Petitioners failed to amend their Answer or Counterclaims in order to assert a claim that any deprivations of their rights were the result of a County custom or practice. Petition App. at 35-36. Therefore, any arguments that the Ninth Circuit's dismissal of Petitioner's § 1983 claims was improper are unsupported by the record.[9]

CONCLUSION

The Ninth Circuit and the District Court did not create law in deciding the issues before them. They both applied the correct, existing rules of law to the relevant, undisputed facts. Their conclusions derived therefrom do not constitute a departure from the accepted and usual course of judicial proceedings. Petitioners offer no credible basis for reviewing

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[8] Petitioners claim they should have been given actual notice of the STB proceedings, but offer no basis for that claim. Petition at 11.

[9] Also, Petitioners' allegation that the County based its petition for an injunction on false statements would not be borne out by a review of the record before the district court. See Petition at 10.

the Ninth Circuit's decision and, therefore, their Petition for Writ of Certiorari should be denied.

Respectfully Submitted,

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